IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8254 OF 2007

M/s. Rajesh Steel Industries ..Petitioner

Vs.

Ramnagina Janglee Mallah and anr. ..Respondents

Mr. A.B. Desai for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : November 19, 2007.

P.C.:

1. Heard the learned counsel for the petitioner - company which is aggrieved by the Judgment and Order dated 16/2/2006 rendered by the learned Member of the Industrial Court at Thane allowing the Complaint (ULP) No. 29 of 1992. The said complaint was filed initially by one Mr.Ram Savak Sahadev Chauhan on behalf of four employees and the management objected to the maintainability of the complaint. On 13/1/2005 the Industrial Court passed an order allowing the present respondent no.1 to be impleaded as the complainant no.2 and thus the complaint was decided on

merits.

2. The Union representing the workmen employed by the petitioner had filed Complaint (UPL) No.648 of 1991 and on 6/12/1991 there was a compromise arrived between the parties, as a result of which the complaint was disposed. The settlement terms were reduced in writing and were brought on record before the Industrial Court and as per the same out of the employees employed, only 12 would be taken in service and remaining would stand retrenched. The 12 workers so stated in the compromise terms / settlement pursis dated 6/12/1991 were to report for duty with effect from 25/12/1991. As per the complainant - present respondent no.1 he went to report for duty on 25/12/1991 and he was not allowed to report. He further alleged that out of 12 employees, some were allowed to report for duty and some others were not permitted to report for duty. He, therefore, issued a notice dated 3/1/1992 (Exh.U-37) and there was no response from the management. He finally approached the Industrial Court through Shri Chauhan.

3. The Industrial Court recorded a finding that the complainant along with the other five workmen was not permitted to resume for duty on 25/12/1991 and thereafter. The Court considered the evidence of the Company's witness Shri Rajendra Vaish at Exh.40. In his depositions before the Industrial Court complainant stated that he was in service from 6/12/1991 and was drawing monthly salary of Rs.1600/-. As per the settlement pursis at Exh. U-36 he was one of the 12 employees who were allowed to resume the duty and inspite of the same when he reported for duty on 25/12/1991 he was not allowed to report for duty. He has also referred to his notice at Exh.U-37. The Industrial Court, therefore, held that the complainant had taken due steps to report for duty and he was not allowed to report for duty and, therefore, there was no case of abandonment of service. The Court also recorded a finding that the establishment was closed from 1/9/1999 and, therefore, while allowing the complaint, the Industrial Court directed payment of wages to the present respondent no.1 for the period from 25/12/1991 till 30/8/1999. When an employee was not allowed to join for duty and was rendered

unemployed forcibly, obviously he would be entitled to his wages as if on duty. The Industrial Court, therefore, did not commit any error apparent on the face of the record so as to cause interference in a petition under Article 227 of the Constitution.

4. Petition is rejected summarily.

(B.H. Marlapalle,J.)